

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TERRY SHARP,)
)
Plaintiff,)
)
V.) Case No. 11-cv-483-MJR
)
INTERNATIONAL COMFORT)
PRODUCTS, CORP.,)
)
Defendant.)

ORDER

REAGAN, District Judge:

Before the Court is Defendant International Comfort Products' Motion to Dismiss Pursuant to 735 ILCS 5/2-619 (Doc. 5). The motion is procedurally flawed and, therefore, will be denied.

International Comfort Products removed this case to this United States District Court, from the Circuit Court for the First Judicial Circuit, in Williamson County, Illinois. Subject matter jurisdiction is premised upon 28 U.S.C. § 1332(a)(1), based on complete diversity of citizenship of the parties. As a general matter, "a federal court sitting diversity applies the substantive law of the state in which it is sitting." *Protective Life Insurance Co. v. Hansen*, 632 F.3d 388, 392 (7th Cir. 2011); *Fednav International, Ltd. v. Continental Insurance Co.*, 624 F.3d 834, 838 (7th Cir. 2010). However, "[o]nce a suit is removed from state court to federal court, it is governed by the federal court's procedures." *Ervin v. OS Restaurant Services, Inc.*, 632 F.3d 971, 977 (7th Cir. 2011) (citing *Claiborne v. Wisdom*, 414 F.3d 715, 720 (7th Cir. 2005)).

Defendant International Comfort Products cites the statute of limitations as grounds

for dismissal. Statutes of limitations are substantive, not procedural, therefore, state law prescribes the limitations period. However, Defendant's motion is premised upon an Illinois procedural mechanism, 735 ILCS 5/2-619, and Illinois Supreme Court Rule 103, rather than federal procedural rules. Consequently, the Court cannot properly analyze Defendant's motion.

IT IS THEREFORE ORDERED that Defendant International Comfort Products' Motion to Dismiss Pursuant to 735 ILCS 5/2-619 (Doc. 5) is **DENIED, without prejudice**. Defendant is free to re-file the motion to dismiss, provided it is premised upon federal procedural law.

IT IS SO ORDERED.

DATED: July 20, 2011

s/ Michael J. Reagan
MICHAEL J. REAGAN
UNITED STATES DISTRICT JUDGE